

Eminent Domain Task Force Meeting Minutes
Thursday, August 4, 2005
State Capitol – Hearing Room 6

Chairman Terry Jarrett called the meeting of the Governor's Task Force on Eminent Domain to order at 10:10 am on Thursday, August 4, 2005.

Roll call was conducted. Task Force members present were Terry Jarrett, Chris Goodson, Gerard Carmody, Senator Chuck Gross, Representative Steve Hobbs, Spencer Thomson, Leslie Holloway, Lewis Mills (via phone) and Howard Wright.

Mr. Jarrett welcomed the members to Jefferson City and thanked them for their service to the state in their willingness to serve on this task force.

Mr. Jarrett also introduced Sherry Fisher, his assistant; Brian Grace from the Department of Economic Development and Chris Roark from the Department of Agriculture; all of whom will provide administrative support to the task force members.

A contact list, the Executive Order and bio's on the task force members were distributed.

Individual members of the task force briefly described their background and interests in the Eminent Domain issue.

Administrative issues were discussed by Terry Jarrett regarding travel, lunches, future meetings, etc. It was suggested the meeting locations vary between St. Louis, Jefferson City and Kansas City to allow for public comment. No decision was made. Mr. Jarrett commented on budget constraints and noted that meeting rooms had already been reserved at the Capitol for future meeting dates.

Opening remarks were made by Terry Jarrett. Mr. Jarrett commented on the Supreme Court ruling in Kelo vs. New London and the ruling that allowed private property to be transferred from one private owner to another private owner, simply because the new owner could generate tax revenue. The transfer of private property simply for the generation of greater tax revenue became constitutional under this ruling. Mr. Jarrett reiterated the goals of the task force as set forth in Governor Blunt's Executive Order 05-15.

- Study the use of eminent domain, especially when the proposed public use of the property being acquired by eminent domain is not directly owned or primarily used by the general public.
- Analyze current state and federal laws governing eminent domain and recommend any changes that would enhance the effectiveness of these laws.
- Develop a definition of "public use" that allows state and local governments to use eminent domain when there is a clear and direct public purpose while at the same time ensuring that individual property rights are preserved.
- Develop criteria to be applied by state and local governments when the use of eminent domain is being proposed.

- Recommend specific eminent domain legislation for possible consideration by the Missouri General Assembly.

The timeframe set by the Governor for the Eminent Domain Task Force to present their recommendations is October 1, 2005 for an initial or preliminary report, and a final report by December 31, 2005.

An overview of Eminent Domain was given by Mr. Stan Wallach of the Wallach Law Firm. Mr. Wallach also serves as Chairman of the Eminent Domain Law Committee, Missouri Bar.

Highlights of his review included:

- Neither the Missouri Bar or the Missouri Bar Eminent Domain Task Force has a public position on the matter.
- E.D. history
 - o Eminent domain are strange words. Latin words meaning Dominium Eminence or supreme lordship. Sometimes referred to as condemnation.
 - o Eminent domain power is described in the Bill of Rights, but not specifically addressed in the U.S. Constitution. The Fifth Amendment prohibits the government from doing things to individual liberties. The final clause is the "taking clause" or the taking without just compensation.
- When Missouri was formed it also needed a Constitution and Bill of Rights. Article 1 of the Bill of Rights provides protection from the use of eminent domain, contains the due process clause and just compensation language. Several sections of Article 1 deal with eminent domain, but Section 28 is of particular interest because it deals with no taking of property for private use. Article 6 discusses condemning of property (blight issue). Section 353.020 defines blighted area and Chapter 523 defines the condemnation process. The three steps of the condemnation process include (1) hearing by trial judge; (2) panel of 3 commissioners who will view property and make proposal or assessment; and (3) is the jury trial.
- Mo. Supreme Court Cases which may have precedence include U.S. Steel (811 S.W. 2d 385); Dalton Case (270 S.W.2d 44 - 1954) and Hon (972 S.W.2d 407 – 1998).
- Public Use evolved to Public Purpose in 1900's. Berman D. Parker is blight case in Washington, DC which went to the US Supreme Court. 1980's was Midciff decision out of Hawaii. Both cases were relevant to Kelo case. Pulltown, Michigan is case of pure economic development purpose (later reversed in 2004).
- Kelo vs. New London case went to the US Supreme Court in February 2004 and the decision was sent down in June 2005. The Court, in a 5-4 decision, largely deferred to the City of New London's judgment that the proposed development on the seized land would provide appreciable benefits to the community and thus "serve a public purpose...and ...satisfy(s) the public use requirements of the Fifth Amendment." The impact of Kelo on Missouri is what this task force will decide.
- Courts will decide that the decision is a Legislative and political determination.
- Mr. Wallach ended his presentation by offering his services to the task force.

Questions and comments were heard from all members of the task force clarifying issues on Stan Wallach's presentation.

Mr. Wallach suggested that possible topics for the working group to look at include:

- Definition of blight
- Constitution
- Judicial deference to legislative changes
- Just Compensation
- Procedures

Mr. Jarrett moved to discussion items on the agenda. He emphasized the need for the task force to identify specific topics to address and suggested that the group divide into working groups.

Rep. Hobbs suggested that copies of the interim report from 2003 Eminent Domain Task force be distributed to this task force as good background material. He also suggested copies of Bill 1085 (2004) and Bill 858, which did not get out of committee, may be other reference materials, although none of these dealt with blight. Notes from committee hearings are available and will be shared with this committee.

The definition of blight, judicial, just compensation and procedures are four areas that the task force might concentrate on. The task force was divided into subgroups. Subgroups include (1) urban (2) rural (3) legislative and (4) procedural. Motion made by Senator Chuck Gross to form the four subgroups. The motion was seconded by Mr. Carmody and was passed unanimously by members the task force.

Assignments for the subgroups are as follows:

1. Urban – Task force members Thomson, Carmody, Gross, Goodson and Wright
2. Rural – Task force members Holloway, Hobbs, Mills and Thomson
3. Legislative – Task force members Gross, Goodson and Wright
4. Procedural – Task force members Carmody, Holloway, Hobbs and Mills.

Terry Jarrett will serve on all four subgroups.

One meeting of the ED Task Force will be devoted to public testimony. This public hearing will begin at 10:00 am. The public testimony hearing will be held August 18th in House Hearing Room 7. It was suggested that DED and Agriculture post the hearing announcement on their websites along with a posting on the Missouri State Government site.

Suggested public testimony guidelines are:

- Time limit. The task force will decide on the exact time limit once it has been determined the exact number of persons wishing to speak.
- All comments, in addition to the verbal comments, must be submitted in hard copy to the Task force. Copies will be made available to all Task Force members by the administrative support staff.
- A sign-up sheet will be posted outside the hearing room on the day of the public hearing for those wishing to speak.
- The Task Force will make sure that both sides are adequately represented and heard.

The Direction of the subgroups will be determined by what is heard at the public testimony. The subgroups will meet later in the afternoon of August 18th to begin dialogue.

The meeting was adjourned at 2:35 pm.